

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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IN RE MILOS LITIGATION

: 08 Civ. 06666 (LBS) (KNF)

: **AFFIRMATION OF MAIMON**
: **KIRSCHENBAUM**

: **ECF Case**
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Maimon Kirschenbaum, an attorney duly admitted to practice in the State of New York, declares as follows:

1. I am an attorney admitted to practice before this Court and a partner in the firm of Joseph & Herzfeld LLP. Joseph & Herzfeld, along with co-counsel Berke-Weiss & Pechman LLP, represents plaintiffs in the above-captioned matter. This Affirmation is submitted in support of plaintiffs' Motion for Collective Action Certification and Class Certification.

2. Joseph & Herzfeld is a law firm whose practice focuses almost exclusively on employee rights. Specifically, the firm represents employees in wage and hour and employment discrimination matters. I lead the firm's practice area regarding wage and hour cases in the food service industry.

3. Since graduating from Fordham University School of Law in 2005, I have worked at Joseph & Herzfeld. I have been a member/partner of the firm since May of 2007.

4. More than 90% of my current caseload involves class action lawsuits against New York City restaurants for wage and hour violations. In litigating these cases, I have spent the majority of the last three years researching and discussing with experts cases, legislative history, and administrative decisions related to New York's laws related to compensation of tipped employees.

5. For approximately two and a half years, Joseph & Herzfeld has filed and served as lead or class counsel for approximately forty class and collective actions on behalf of people employed in the New York food service industry, in addition to a significant number of individual actions. *See, e.g., Agofonova v. Nobu Corp.*, No. 07-CV-6926 (S.D.N.Y. Feb. 6, 2009) (granting final approval of settlement and certification of settlement class in wage and hour class action); *Williams v. Twenty-Ones, Inc.*, No. 07-CV-3978, 2008 WL 2690734 (S.D.N.Y. June 30, 2008) (conditionally certifying FLSA collective action of restaurant/club workers); *Fasanelli v. Heartland Brewery, Inc.*, 516 F. Supp. 2d 317 (S.D.N.Y. Oct. 5, 2007) (conditionally certifying FLSA collective action of restaurant workers).

6. As a result of these lawsuits, we have recovered significant sums of money for thousands of New York City restaurant employees. Several of these cases have already settled for a total recovery of over \$10,000,000 (some are pending preliminary or final approval by the Court). In addition, our litigation increased awareness of wage and hour laws throughout the New York City restaurant industry.

7. Joseph & Herzfeld LLP is willing and able to commit the necessary resources to represent the class.

8. Based on our experience, a large percentage of consent forms are typically returned as undeliverable, and the only way to locate these employees is by performing a search using the social security numbers. Accordingly, we request that the Court order defendants to produce a list of all non-managerial, tipped employees who were employed at Milos from July 28, 2002 to the present with the following information: name, last known mailing addresses, alternate addresses (if any), all known telephone numbers, social security number, and dates of employment.

I affirm, under penalty of perjury, that the above and foregoing information is true and correct.

Dated: New York, New York
May 19, 2009


Maimon Kirschenbaum